

Petition for Writ of Mandamus Denied and Memorandum Opinion filed November 7, 2017.



In The
Fourteenth Court of Appeals

NO. 14-17-00784-CR

IN RE JUAN CARLOS ULLOA, Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS
183rd District Court
Harris County, Texas
Trial Court Cause No. 1201535**

MEMORANDUM OPINION

On October 5, 2017, relator Juan Carlos Ulloa filed a petition for writ of mandamus in this court. *See Tex. Gov't Code Ann. § 22.221 (West 2004); see also Tex. R. App. P. 52.* In the petition, relator asks this court to compel the Honorable Vanessa Velasquez, presiding judge of the 183rd District Court of Harris County, to

rule on relator’s Second Motion for the Appointment of Habeas Corpus Counsel (the Motion for Counsel).

To be entitled to mandamus relief, a relator must show (1) the relator has no adequate remedy at law for obtaining the relief sought; and (2) what the relator seeks to compel involves a ministerial act rather than a discretionary act. *In re Powell*, 516 S.W.3d 488, 494–95 (Tex. Crim. App. 2017) (orig. proceeding). A trial court has a ministerial duty to consider and rule on motions properly filed and pending before it, and mandamus may issue to compel the trial court to act. *In re Henry*, 525 S.W.3d 381 (Tex. App.—Houston [14th Dist.] 2017, orig. proceeding).

“A relator must establish that the trial court (1) had a legal duty to rule on the motion; (2) was asked to rule on the motion; and (3) failed or refused to rule on the motion within a reasonable time.” *In re Henry*, 525 S.W.3d 381. “The trial court is not required to consider a motion that has not been called to its attention by proper means.” *Id.* The record must show both that the motion was filed and the trial court has not ruled on the motion within a reasonable time after being requested to do so. *See In re Foster*, 503 S.W.3d 606, 607 (Tex. App.—Houston [14th Dist.] 2016, orig. proceeding) (per curiam). Absent proof that the motion was properly filed and that the trial court has been requested to rule on the motion, relator is not entitled to mandamus relief. *See In re Florence*, No. 14–11–00096–CR, 2011 WL 553241, at *1 (Tex. App.—Houston [14th Dist.] Feb. 17, 2011, orig. proceeding) (per curiam) (mem. op., not designated for publication). To establish that the motion was filed, relator must either provide a file stamped copy of the motion or proof that the motion was mailed to the clerk at proper address with proper postage. *See In re Bishop*, No.

14-06-00636-CV, 2006 WL 2434200, at *1 (Tex. App.—Houston [14th Dist.] Aug. 24, 2006, orig. proceeding) (per curiam) (mem. op.). “Presenting the motion, along with a request for a hearing, is required to let the court know that the defendant wants the trial court to act on the motion and whether the defendant would like a hearing on the motion.” *Rozell v. State*, 176 S.W.3d 228, 230 (Tex. Crim. App. 2005).

As the party seeking relief, relator has the burden of providing this court with a sufficient record to establish his right to mandamus relief. *See Walker v. Packer*, 827 S.W.2d 833, 837 (Tex. 1992) (orig. proceeding); Tex. R. App. P. 52.7(a)(1) (relator must file with petition “a certified or sworn copy of every document that is material to the relator’s claim for relief and that was filed in any underlying proceeding”).

Attached to relator’s petition is a filing letter addressed to the clerk dated August 4, 2017 and the Motion for Counsel (indicating that it was executed on August 30, 2017). These documents have no file stamp and are not certified or sworn copies as required by Tex. R. App. P. 52.7(a)(1). Relator is not entitled to mandamus relief because the record contains no proof that the letter and the Motion for Counsel were filed and received by the trial court or that relator has brought the Motion for Counsel to the attention of the trial court for a ruling through proper means.

Further, Rule of Appellate Procedure 9.5 requires documents filed with court of appeals be served on all parties (including the State of Texas) and the certificate of service contain date, manner of service, name and address of each person served and, if person served is party’s attorney, name of party represented by attorney. Tex.

R. App. P. 9.5. The certificate of service in relator's petition does not meet these requirements.

For these reasons, we deny relator's petition for writ of mandamus.

PER CURIAM

Panel consists of Justices Jamison, Busby, and Donovan.
Do Not Publish — Tex. R. App. P. 47.2(b).